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C O N F I D E N T I A L SECTION 01 OF 02 BAGHDAD 003248

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SUBJECT: DE-BAATH LAW REPRESENTS COMPROMISES BUT NO RADICAL
DEPARTURE

Classified By: POLCOUNS MATT TUELLER FOR REASONS 1.4 (B) and (D)

¶1. (C REL USA GBR CAN AUS) Summary: On September 19, the Council of Ministers approved the Law of Accountability and Justice (the "de-Ba'ath Law") and passed it to the CoR where it is currently being reviewed by the Legal and de-Ba'athification Committees. It could be voted into law by the end of October. The draft, which was prepared by deputies to the political leadership and endorsed in their August 26 communique, contains elements of previous drafts, but will expand and codify many of the assumed powers of the Higher National De-Ba'athification Commission within a new organization. While aspects of the law, such as an independent appeals process, are promising, other provisions will prove troublesome in the path towards significant reform of the de-Ba'athification process. While not a radical departure from the former law, the endorsement of the Shia/Sunni/Kurdish leadership will give the process broader legitimacy. End Summary.

Timeline for Passage of the Law

¶2. (C REL USA GBR CAN AUS) Following agreement at the Deputies Meeting on September 17, the Law of Accountability and Justice (the "de-Ba'ath Law") was approved by the Presidency Council and the Council of Ministers and submitted to the CoR, where the Legal and De-Ba'athification Committees are now reviewing it. The draft will likely come up for a first reading shortly after CoR sessions resume on October 2, followed by second and third readings a few days later. If there are no delays in the discussions of the draft, the draft could be passed into law as early as October 8th. (Comment: An October 8th passage would signify a remarkable efficiency not often demonstrated by the CoR. It is more likely the draft would come to a vote during the October 16-22 session. The endorsement of the leaders, however, may influence parliamentarians to expedite the process. End Comment.)

Structure of the Higher National Commission
for Accountability and Justice

¶3. (U) The law would establish the Higher National Commission for Accountability and Justice (HNCAJ), which is described as an independent body, but one which is also subordinate to the CoR. The law does not clarify this inconsistency. The HNCAJ, whose functions essentially duplicate those of the existing Higher National De-Ba'athification Commission (HNDBC), would be led by seven members who are appointed by the Council of Ministers, confirmed by the CoR, and ratified by the Presidency Council. The members of the Commission would elect their Chairperson, who would supervise a number of departments within the HNCAJ, including a Financial and Economic Tracking Department and a Legal Department.

¶4. (U) The law would also establish the Board of Cassation for Accountability and Justice, a committee of seven judges recommended by the Higher Juridical Council, confirmed by the Council of Ministers, and ratified by the Presidency Council. This independent board would consider all appeals to the decisions of the HNCAJ.

Scope of the HNCAJ

¶5. (C REL USA GBR CAN AUS) The draft empowers the HNCAJ to prevent the Ba'ath party "from returning to power or public life in Iraq, ideologically, administratively, politically, or in practice under any appellation" and to "purge the Ba'ath party system in any form from organizations of the government sector, mixed sector, civil society, and Iraqi society." It also says that the HNCAJ will uncover and reclaim property illegally claimed by the former regime, and grants the HNCAJ a role as the societal conscience by "documenting the crimes and illegal practices of the Ba'ath Party's elements...lest (future generations) fall into the clutches of oppression, tyranny, and persecution."

¶6. (U) Under the draft, former Ba'ath party members of rank Shu'aba (Section Member) and above (an estimated 12,000 individuals) would be removed from civil servant positions and granted a pension. This scope would allow those of the Firqa (Division Member, one rank below Shu'aba) level (at most, approximately 38,000) to return to government service. However, there are some exceptions to this general rule. Former civil servants of the rank Firqa would also be removed from their position and granted a pension if they held the

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rank of Director General or above within a government agency, and all members of the Firqa (Division Member) rank and higher would be ineligible for any future position in the security ministries, the MFA, or the Ministry of Finance without a waiver from the Council of Ministers. Members of the "repressive security agencies," including the Intelligence Service, Military Security, Special Security, are eligible to receive pensions or to transfer to any other civil ministry, except for the security ministries, the MFA, and the Ministry of Finance. Saddam's Fedayeen would receive no pension rights for that employment.

Concerns with the draft

¶7. (C REL USA GBR CAN AUS) Reinstatement and pension rights are not granted automatically by the draft. Instead, those eligible for pension or reinstatement must apply within 60 days of the law coming into effect. The draft does not specify which organization would receive these applications or any clear process for reinstatement.

¶8. (C REL USA GBR CAN AUS) The draft contains a sunset clause for the existing HNDBC, stating that the HNDBC is to be dissolved six months after the law goes into effect, but it puts no explicit end date on the new HNCAJ created by the law. The CoR can dissolve the HNCAJ by an absolute majority "after the completion of its mission." It is possible that the HNDBC and the HNCAJ can coexist for some months, depending on how quickly the HNCAJ is established after the passage of this law. How they would share their responsibilities is unclear.

¶9. (C REL USA GBR CAN AUS) The Financial and Economic Tracking Department within the HNCAJ has a mandate to enumerate and assess "the financial and economic entities seized by the former regime's henchmen, monitoring such property and entities in Iraq and abroad, and submitting recommendations to the competent agencies for their

recovery." The HNDBC assumed this role in a handful of cases to freeze the bank accounts of NGOs because a single member was a former Ba'athist. CPA Order 45, which grants the Prime Minister's Office authority to regulate NGOs, is the basis for these actions.

Comment

[¶10](#). (C REL USA GBR CAN AUS) Overall, approval of this draft will codify much of what the HNDBC has informally added to its mandate over the past few years, albeit under a different name. It is not clear how the mandate of the new HNCAJ to purge Iraqi society as a whole of Ba'athists will affect civil society, the media, and the rest of the non-governmental sector, but it is possible that the HNCAJ would attempt to expand its influence beyond the government, through provisions like CPA Order 45. The lack of a sunset clause for the HNCAJ will ensure that it exists for as long as fear of a Ba'athist return remains; not coincidentally, the HNCAJ's mandate includes the cautioning of future generations against such a revival. End Comment.
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